Issues of Merit

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Director's Perspective

Does the Solution Address the Problem?

Our recent series of articles on performance-based removals is meant to provide analysis, rather than anecdotes, about difficulties in addressing poor performers. It's a timely topic: the perceived difficulty in dealing with poor-performing Federal employees was allegedly a major factor in proposing a different appeal system for DHS employees and in the recently proposed legislation affecting DOD personnel. But does the government really have a problem dealing with poor performers, and is changing the appeal process the solution?

On the one hand, the percentage of employees whose performance is so poor they need to be terminated is probably rather small. In studies conducted separately by MSPB and OPM, the percentage of employees who coworkers feel should be fired for poor performance is less than 4 percent. Even so, debate about what to do with poor performance continues at many levels, including congressional committee staffs.

Both MSPB and OPM studies show that managers are reluctant to take action against poor performers, due in part to disincentives to do so. For example, managers may not be allowed to fill the job when they remove a poor performer, in which case a poor performer may be preferable to no performer. Many managers are not directly rewarded when they take actions against poor performers, nor are they penalized when they fail to do so. Managers cite effects on organization morale, a lack of confidence in the system, too little time, and a lack of higher-level management support as main reasons for their hesitancy. Perhaps understanding and addressing these concerns, not abandoning a proven appeal system, is the key to dealing more effectively with poor performers.

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OPE Focus on the Facts

Belief:

The percentage of new hires who resign during their first year of federal service remains stable from year to year.

Fact:

While the first-year quit rates in FY 2000 and FY 2001 were around 20 percent, during FY 2002, only 13.4 percent of first-year employees resigned.

Source: OPM's Central Personnel Data File dynamics reports for FY2000-FY2002. Data are for full-time permanent executive branch employees.

How Many is "Multiple"?

In our September 2002 *Issues of Merit*, we introduced the "multiple hurdles" strategy—using assessment tools in succession to help manage the applicant pool and identify the best candidate. We mentioned that hurdles (i.e., assessments) should be selected and sequenced based on their costs and benefits. But we did not discuss how many hurdles are enough, or how many are too many.

In an ideal world, these questions would be answered by data. Agencies could conduct experiments, using several methods of assessment in varying sequences, evaluating the success of the differing approaches (using, of course, sophisticated measures and statistical techniques), and selecting the "winning" strategy. But this is rarely, if ever, practical.

Fortunately, research provides some useful guidance. A 1998 study confirms that two assessments can be significantly better than one. The study examined the validity of mental ability tests, used alone, and the validity of such tests combined with a second assessment tool.[1] The authors report that the addition of an assessment such as a structured interview or reference

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In fact, the formal appeal process is only the last step in dealing with a poor performer, and often not needed. For example, managers say that about half of the actions they take to remove employees result in a resignation or some other resolution short of actual removal. In none of these cases would the affected employees have any appeal rights. Moreover, for those for whom formal removal actions are actually taken, only about half exercise their right of appeal. Thus only a relatively small fraction of the actions taken by management actually result in formal appeals. Just as important, statistics suggest that the appeal process itself is neither excessively time-consuming nor likely to overturn management actions. Initial decisions by MSPB judges are finalized in an average of 96 days, which often includes holding hearings. During this time, the employee against whom action is taken is off the agency rolls. Agencies' actions are sustained in about 80 percent of the cases that do get appealed.

Does this mean the process for dealing with poor performers cannot be improved? Of course not. However, many issues need more clarity. Why do supervisors believe they will not be supported by agency management if they take actions against poor performers? Do agencies spend too much time and effort at the agency-level building and documenting the case? Do OPM guidelines and the agency's own regulations make the process too onerous? Unfortunately, these critical questions have not been carefully examined.

But the appeal process is not broken. It is credible and relatively fast, and it is only a small part of the management of poor performers. It must also be remembered that the appeal process does not exist to preserve agencies' interests, nor to protect an individual's "property rights." Instead, the appeal process exists to protect the public interest. The process helps ensure that agencies take such actions against employees only for just cause and not simply for displeasing agency officials. It is not clear that any agency-controlled process can credibly serve this purpose. Additionally, any appeal process that provides genuine due process must provide for a reasonable measure of fact finding, weighing of evidence, and deliberation.

It appears that Congress has been provided a "solution" that does not address the problem of poor performers and may undermine a merit-based civil service.

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Assessment

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checks can yield a significant improvement in ability to predict actual job performance.

Of course, some cautions apply. The second assessment tool must have some validity in its own right. It does little good, and possibly substantial harm, to follow a valid assessment such as a work sample test with an invalid assessment such as handwriting analysis. Also, the second assessment should not duplicate (in mathematical terms, be highly correlated with) the initial assessment. Restated, the second assessment should complement the first assessment: it should measure different things or measure the same things differently.

If two assessments are better than one, are three better than two? On this question, academic research seems silent. However, we note that a cost-benefit analysis could well favor using a third assessment (such as reference checks or reviewing a work sample), because the benefits can be substantial. Consider the value of avoiding a poor selection. A 2002 study conducted by the Employment Management Association reports that the average cost of hiring a professional employee is nearly $7,000.[2] And this $7,000 is only a small portion of the actual cost of a poor selection, because it does not include items such as wasted salary dollars and the consequences of poor performance, which can be truly staggering. Viewed this way, a few hours devoted to conducting reference checks or reviewing work samples to reduce the likelihood of an expensive mistake is time well spent.

So is more assessment always better? No. First, assessment must be timely as well as thorough, because good candidates will not wait forever for a hiring decision. Any agency that takes too long in its decision-making can end up with a shallow and unpromising candidate pool. Second, at some point, additional assessment can yield minimal or even negative returns, as illustrated in a December 2001 MSPB study of the federal merit promotion program. Often, the selecting official has directly observed employees' performance (an excellent predictor when an employee's current position and the position to be filled are similar) and is familiar with employees' relevant training and experience. In effect, the selecting official has already used two assessment tools, albeit implicitly. In these situations, advertising a vacancy and formally rating and ranking candidates does little to inform the selection decision, and—if the process simply confirms a "predetermined"

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outcome—will contribute to applicant cynicism about the integrity of the hiring system.

In conclusion, there is no easy answer to the question of how many hurdles are enough. Research and experience suggest that agencies would do well not to rely on a single assessment to make selection decisions. However, hiring decisions need to be made—and they must be made timely and at reasonable cost. Ultimately, agencies must balance all the factors and use their best judgment.

[1] Frank L. Schmidt and John E. Hunter, "The Validity and Utility of Selection methods in Personnel Psychology: Practical and Theoretical Implications of 85 Years of Research Findings," *Psychological Bulletin*, The American Psychological Association, Sept. 1998.

[2] 2002 SHRM/EMA Staffing Metrics Study, Society for Human Resource Management, Alexandria, VA, 2002. The average cost per hire for FLSA exempt employees was $6,943. Common components of cost included advertising, on-line and Internet services, recruiter costs, and reference and background checks.

Tools of the Trade

Writing better vacancy announcements

In this, the third in our series on HR tools, we offer some advice based on our recent study of federal vacancy announcements. As part of our study, we reviewed and rated 100 randomly selected vacancy announcements posted on OPM's employment web site, USAJOBS. We found that the announcements were of generally poor quality, most of them making no effort to sell the jobs or the employing organizations.

Since then, a number of agencies have taken steps to improve their vacancy announcements, but there's still much work to be done to improve quality appreciably. Here's what we suggest you consider in writing or reviewing your agency's announcements.

1. Know the job well enough to describe it clearly. Human resources specialists or technicians who write vacancy announcements should be familiar with the work done in the agencies they serve. This helps them describe job duties in a more appealing way, rather than copying duties from outdated position descriptions. A vacancy announcement should give prospective candidates a clear picture of their duties if hired.

Here's an example that shows what not to do (it's an excerpt from a GS-6 fire protection inspector vacancy announcement):

Participates in the building fire prevention and inspection program of the area served, insuring that all assigned buildings are [sic] *structures are inspected for fire hazards on a scheduled basis in accordance with established elements of the fire risks and hazards in buildings under rehabilitation and/or alterations to insure the operations meet the requirements of the National Fire Codes, existing orders and depot requirements.*

This rambling paragraph never states that the person selected for this job will actually perform fire inspections. A more direct and less confusing description might read, "In accordance with the National Fire Codes, you will inspect buildings for fire risks during construction or renovation."

2. Be careful when using templates and standard language. The advantages of templates are lost if their use confuses applicants. For example, here's an excerpt from a GS-6 administrative assistant announcement that includes standard language that should have been deleted:

Veterans Preference is not a factor for Senior Executive Service jobs or when competition is limited to status candidates (current or former career or career-conditional employees).

This has no place in a posting for a GS-6. It may be obvious to an HR specialist that this standard language should have been deleted, but it's sure to leave the applicant wondering. Always check announcements for inappropriate template language.

3. Review vacancy announcements for errors in spelling and grammar. Misspelled and misused words are not the best way to introduce your agency to prospective employees.

4. Write in plain English. Use active voice and avoid using jargon and acronyms when communicating both inside and outside the organization.

The Board's report "Help Wanted: A Review of Federal Vacancy Announcements" offers further information, and is available on the STUDIES page of our website, www.mspb.gov.

HR as Strategic Partner: Where to Begin?

Lately it seems as if we're hearing more and more about the importance of HR specialists becoming "strategic partners" with their agency's management. But given that such an arrangement is likely to differ greatly from the way HR specialists are accustomed to operating, how does one go about becoming a strategic partner? That question recently was answered by independent HR consultant Ken Gaffey in an article that appeared in the on-line publication "Electronic Recruiting Exchange" (http://www.erexchange.com). The author's practical advice for establishing a partnership with management is geared towards recruiters, but can apply to any HR specialist. Here are the steps you should consider if you're looking for acceptance as a strategic partner:

1. *Establish a presence.* Not only should you be physically present at staff meetings (whether or not

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there are HR items on the agenda) but you should also get connected with what's going on in the agency and in the greater HR world. Don't rely on emails and phone calls to conduct your business—get out and talk to managers in the organization; solicit their input and listen to their ideas and questions about issues that need to be resolved. Make it a point to learn from others in the HR business new ways of addressing challenges you face in your own agency.

2. *Share knowledge.* Read and learn more about the mission, tasks, and skills of the managers in your agency. Share with them your areas of expertise by explaining things in terms that are relevant to their work. Ask questions at meetings and provide information on open issues when you have relevant information.

3. *Be creative.* Find mutually beneficial ways to help other organizations in the agency. The author of the article provided the example of volunteering members of his staff to test software developed by another organization, thus freeing that organization's employees for more complex tasks. The arrangement also enabled the HR employees to learn more about the work of others whom they would likely be assisting on HR issues at some point. The HR employees who tested the software developed partnerships and furthered their ability to relate and contribute to the organization's mission in areas besides HR.

4. *Publicize success.* Document and broadcast your successes, including those in areas outside of HR. And it's important to do this in language that's meaningful to the other managers in your agency, not in HR jargon. Show them how you are contributing to the team by achieving things that they have identified as goals (or things that will enable the team to reach its goals).

5. *Foster shared respect.* To truly be a partner, you must not only gain the respect of your agency's managers, you must respect them as well. How many HR specialists have laughed privately at something a manager unfamiliar with the HR business wanted to do? That kind of attitude or behavior is not helpful. The HR specialist should seek to be seen as not only a subject matter expert in HR, but also someone who understands the needs and issues of managers. HR specialists must be alert for ways to contribute that aren't limited to HR matters.

As Gaffey notes, "Being seen as a partner starts with being seen as someone with an overall contribution and not as a focused specialist with one and only one function to offer."

Radical Reform in the States: Unanswered Questions

In our February 2003 *Issues of Merit*, we described major civil service reform efforts in Florida, Georgia, and Texas. These states have discarded most centralized systems and rules, and reduced or eliminated protections such as seniority and tenure. Managers and state personnel officials generally believe the reforms have removed long-standing barriers to timely hiring, rewarding high performance, restructuring, and employee accountability.[1] Nevertheless, before the reforms can be deemed an unqualified success, several questions need to be answered:

How do the reforms affect the overall quality of human resources management, fair and equitable treatment, and legal compliance? One preliminary finding indicates that some human resource officials have found that the absence of common standards and guidelines can complicate, rather than simplify, matters such as salary administration, and can increase the potential for inequitable treatment. Unfortunately, inequitable treatment and the problems it causes (poor morale, turnover, legal challenges, etc.) may not be apparent for some time.

How do the reforms affect individual and organizational performance? Looking only at specific human resource results—whether positive outcomes such as reduced time to hire and the ability to reward high performers, or negative outcomes such as cronyism, patronage hiring, and arbitrary firings—misses a broader point. Ultimately, what matters most is whether the government operates its programs legally, fairly, and effectively.

From this perspective, reforms that eliminate practices such as seniority, longevity-based pay, due process, and appeal rights can be double-edged. Such practices have been faulted for emphasizing employee rights over employee responsibilities while diminishing accountability for good conduct and performance. But these practices also provide a measure of protection for public employees whose official actions could put them at odds with their organization, public figures, or other powerful stakeholders. There are many such employees; obvious examples include those who enforce laws, issue regulations, conduct inspections, or award contracts. (In fact, law enforcement officers in Florida advanced this argument during the legislative debate over reform, and the final legislation retained seniority protection for law enforcement officials.)[2]

This is a challenging issue, and one for which measures are not easy to devise. It's not hard to determine how reforms affect tangible outcomes such as time to hire and disciplinary action rates. But it's difficult to discern how reforms affect willingness to act in the public interest. And it's even more difficult to determine how reforms affect actual behavior—employees' day-to-day decisions

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about whether and how to protect the public interest.

Until we have a better idea of how well the reforms are doing with respect to the less tangible issues, we won't know whether the HR system overhauls in these states have been completely successful.

This is significant for the federal sector, where broad HR reforms are being contemplated both government-wide and within individual agencies. And, in recent years, there has been much talk about making government "more like business." While we can learn much from the private sector, we encourage reformers to acknowledge issues and challenges unique to the public sector, and to design and evaluate reform proposals in terms of what is important—not only what is readily measurable.

[1] Walters, Jonathan, "Life After Civil Service Reform: The Texas, Georgia, and Florida Experiences," IBM Endowment for the Business of Government, October 2002, pp. 35-36.

[2] Ibid., p. 40.

Firing Poor Performers: Part II

In the last *Issues of Merit*, we examined the critical role of performance standards in removal or demotion actions for poor performance. Now we examine some other requirements for actions taken under Chapter 43 of Title 5.

OPM regulations require an agency that seeks to remove or demote an employee for poor performance to first (1) inform the employee of the critical job elements in which he or she is deficient, (2) inform the employee what is required under those critical elements, (3) inform the employee that failure to fulfill the elements may lead to demotion or removal, (4) provide the employee an opportunity to improve his or her performance, also known as an "opportunity period," and (5) assist the employee in improving his or her performance. Below, we discuss selected aspects of these requirements in more depth.

Meeting the requirements. Many federal agencies use performance improvement plans, or PIPs, to meet the above requirements. However, the format and terminology matter less than the substance. Also, an agency may notify the employee of performance deficiencies as soon as they become known; it need not wait until an annual performance review to do so.

Critical job elements and performance requirements. Critical job elements must be based on the employee's position of record. Also, an agency may not substantially change the employee's performance standards at the beginning of the opportunity period and then find that the employee's performance is unacceptable under the new standards. However, an agency may limit an employee's duties and responsibilities during the opportunity period to specific parts of his or her regular duties, which is often an effective way to focus an employee on the areas of deficiency

> *When an employee's performance improves to an acceptable level, but within a year relapses, the agency may remove or demote the employee without affording a new opportunity to improve.*

The opportunity to improve. There is no definitive rule on the length of the opportunity period. The sole criterion is that the employee must have a reasonable opportunity to improve. How long is "reasonable" depends on the position and the duties involved, but the MSPB has found opportunity periods of 30 days, and even less, acceptable in some instances. If an employee is on extended leave during the opportunity period, extension of the period should be considered in order to ensure a reasonable opportunity to improve. When an employee's performance improves to an acceptable level, but then, within a year, relapses in the same area in which the improvement had occurred, the agency may remove or demote the employee without affording a new opportunity to improve.

Assisting the employee. An agency has considerable flexibility in the assistance it provides during the opportunity period. For example, the agency can provide written feedback on work products, oral counseling and guidance, or formal training sessions. However, the agency must do something and it must meet its commitments. Where an agency either fails to provide assistance or fails to provide promised types of assistance, MSPB has held that the agency has not provided a reasonable opportunity to improve. In that event, the agency action may be reversed.

Proving the action before the Board. Finally, the agency must monitor and document the employee's performance during the opportunity period. The agency must be prepared to prove, by substantial evidence, that the employee's performance during the opportunity period was deficient as measured against the critical elements of the position. As discussed in our last issue, substantial evidence is a lower standard of proof than the preponderant evidence standard used in disciplinary actions for misconduct and most civil lawsuits. It means the degree of evidence that a reasonable person might accept as adequate to support a conclusion, even though other reasonable people might disagree. Although this is a relatively low burden of proof, the agency must still present evidence, testimonial and documentary, about an employee's performance during the opportunity period. If the agency fails to present substantial evidence, the Board will reverse the action.

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